

IN THE PROVINCIAL DISTRICT COURT OF THE STATE OF UTAH,  
IN AND FOR UTAH COUNTY.

---*Answer*---

Provo Reservoir Company, a corporation, }  
Plaintiff. }  
-vs- }  
Provo City et al. }  
Defendants. }  
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ANSWER  
COUNTER-CLAIM  
AND CROSS COMPLAINT

Comes now Upper East Union Irrigation Company,  
a corporation, one of the defendants in the above entitled  
action, and by leave of Court and consent of counsel for  
the plaintiff first had and obtained, makes the following  
answer to the plaintiff's complaint, to-wit:

FIRST.-- This defendant admits the allegations con-  
tained in the paragraphs of the plaintiff's complaint  
numbered one to twenty-six, both inclusive, and also  
admits the allegations contained in paragraphs 28 and  
29 (a) of said complaint.

SECOND.-- Not having any knowledge or information  
sufficient to form a belief in respect thereto, this  
defendant on that ground, denies all the allegations  
contained in the paragraphs of said complaint numbered 27,  
29, 29 (a), 29(b), 30, 31, 32, and 33.

THIRD.-- Answering paragraph of said complaint numbered  
29(c), this defendant denies that it has, at any time  
consented to the change of the place of diversion of the  
water described in paragraph 29(b) of said complaint, and  
denies that none of the defendants will be injured or  
damaged by the transfer of the water, as alleged in  
said paragraph.

FOURTH.-- Denies each and every allegation contained  
(1)

in the paragraph numbered 29(e) of said complaint.

FIFTH.-- Denies that this defendant has, at any time, diverted from said river, or converted to its own use, the right to the use of which belongs to, or was or is the property of the plaintiff, and denies that this defendant threatens to violate any rights of the plaintiff and denies that any acts of this defendant have or will work any injury to the plaintiff or its stockholders or lessees or destroy their crops or do them any damage whatever, and denies that any act or acts of this defendant, threatened or otherwise, have deprived or will deprive, the plaintiff or its stockholders or lessees of any right or interest they may have to the use of the water of said Provo River.

SIXTH.-- Answering paragraph of said complaint numbered 36, this defendant denies that it has, at any time, used any water diverted by it, wastefully, or in any quantities in excess of that necessary and beneficial for the irrigation of the lands of this defendant's stockholders, and denies that any use of the waters of said Provo River, by this defendant, has deprived or is depriving the plaintiff, or any party to this suit, of any lawful right to the use of the waters of said river, and denies that any use of said water, by this defendant, was or is a violation of the rights of the plaintiff, or its stockholders or lessees, or has prevented the development of the country or been in violation of the public policy of this state.

SEVENTH.-- Answering paragraph numbered 37 of said complaint, this defendant admits the rendition and entry of the two decrees mentioned in said paragraph, and denies generally each and every other allegation contained in said 37th paragraph, not herein specifically admitted.

10.--- Answering the 10th para. resp. or 1st complaint, this defendant denies generally each and every allegation contained therein.

11.--- COMPLAINT OF PLAINTIFF

Further answering the plaintiff's complaint and also a defense thereto, and by way of counter-claim against the plaintiff and cross-complaint against each and all of the other defendants, this defendant alleges:

12.--- Each and every allegation contained in the paragraphs numbered one to twenty-six, both inclusive, of the plaintiff's complaint is admitted and alleged as a fact of this counter-claim and cross-complaint in like manner as though the same were set forth in full herein.

13.--- That more than thirty years ago, the grantors and predecessors in interest of this defendant, were the owners in fee simple of about 1000 acres of land lying along and below the bank of this defendant as now constructed in Utah County, Utah, which lands then were not still free of gravelly and porous character and without irrigation, said lands were and are unproductive, but when properly and sufficiently irrigated said lands have and do now produce sound and valuable agricultural and horticultural crops and the said lands, by reason of their location near the city of Provo, and by reason of the water right so purtenant thereto, and hereinafter particularly described are of great value.

14.--- That more than thirty years ago, the grantors and predecessors in interest of this defendant for the purpose of acquiring a right to the use of the waters of Provo River for the irrigation of said lands and for culinary, domestic and other purposes, by means of dams and other diverting works, placed in the natural channel of said Provo River, near the mouth of Provo Canyon, in Utah County, Utah, and by means of

canals and ditches leading therefrom to the lands hereinabove mentioned, diverted and appropriated of the then unused appropriated water of said river and applied to useful and beneficial purposes upon the lands above mentioned, the quantity of water hereinafter set forth and ever since the date of the first acquisition of said water, this defendant and its grantors and predecessors in interest have continued (except when wrongfully interrupted) during each and every year to divert and appropriate from the waters of said river and apply in irrigation of said lands the for culinary and domestic and other useful and beneficial purposes, the quantity of water hereinafter mentioned which quantity has been, during all of said time, and still is necessary and beneficial for said purposes, and the use thereof has been and now is economical and without waste and absolutely requisite to maintain the high state of cultivation to which said lands have been developed and to maintain and supply the homes and industries served with water from this defendant's canal.

Fourth.--That more than thirty years ago and long prior to the acquisition by the plaintiff or any of its grantors or predecessors in interest of any interest or right in or to the waters of said Provo River, this defendant's canal had been completed and at the date of said completion, said canal had and ever since has continued to have a carrying capacity equal to 37.21 second feet of water, and ever since the completion of said canal this defendant and its grantors and predecessors in interest above, during the high water stage of each and every year, diverted from said river through said canal and applied to necessary and beneficial uses the full carrying capacity of said canal, to-wit, 37.21 second feet of water, and have continued to divert said quantity of water from said river during each and every

(except when wrongfully interfered with) year, so long as the flow in said Provo River, near and below the mouth of Provo Canyon, in Utah County, Utah, is sufficient to fill to their full capacity, such channels as may be selected, the canals of the irrigation system in this suit, and take water from the same near or below the mouth of said Provo Canyon; and when the volume of said river near and below the mouth of said Provo Canyon has become reduced in volume to a quantity equal to that taken by defendant during each year and before the date of filing of this suit, said defendant has diverted from the waters of said river at the point of diversion, in each year, a quantity exceeding 15,000 cubic feet per minute; and further, during each year the defendant has diverted from the waters of said river,

.0665 of all the water of said river flowing near or below the mouth of Provo Canyon and has continued during each year to divert said quantity until the volume of water flowing in said river at said point is reduced to a volume not exceeding 15,000 cubic feet per minute, whereupon, this defendant has diverted from the waters of said river during each year .0703 of all of the waters of said river flowing near or below the mouth of said Provo Canyon, and has continued (except when wrongfully interfered with) to divert the last mentioned quantity so long as the waters of said river, near or below the point aforesaid, did not exceed 15,000 cubic feet per minute, that all of the water so diverted by this defendant has been diverted under a claim of right, and ownership based on the appropriation and use aforesaid, and has been conveyed and applied in a careful and economical manner and the use thereof has been necessary and beneficial and requisite to the proper irrigation and

manufacture of coal, flour, lumber, iron and industries  
owned by said defendant's stockholders and maintained on the  
lands served by said defendant's canal.

¶ 12. -- This defendant further alleges that the rights  
to the use of the waters of Provo River and its proportionate  
share of the flow of said river diverted, unpermitted and  
owned by said defendant, hereinabove set forth, were  
acquired prior to the organization of the plaintiff; and the  
proportionate share of said river unpermitted, owned and  
used by this defendant to the exclusion of all others and liable to  
be controlled and regulated by the plaintiff as a public  
river relating to all the natural course of said river,  
as well as to the different tributary rivers through which  
drainage or springs or streams or resulting from the  
diversion of the irrigation system established in action  
of the訴 of the plaintiff diversion from above the outlet of  
Provo Canyon, as aforesaid, to the outlet of said Provo  
Canyon, and further, that the plaintiff, and those who  
organized it, have diverted the same, particularly  
during the past four years, from the outlet of said river,  
interfered with the natural course of said river so wrong-  
fully, unlawfully, and arbitrarily, as to completely cut off  
the joint air diversion and use of certain of the outlets of  
said river claimed by the plaintiff, as aforesaid, because  
of having furnished new sources of supply, or water for said  
river at outlet, so that it can enter counties, has wrongfully  
diverted, in Utah County, near the mouth of Provo Canyon,  
large quantities of the natural flow of said river, to which  
this defendant, and other defendants in this action were  
entitled under the pretense of re-capturing the water  
pretended to have been supplied from new sources. That the  
said wrongful and unlawful interference with the flow of the

waters of said river by the plaintiff in this action, in addition to depriving this defendant and the other defendants of portions of the waters of said river, to which they were entitled, has also deprived this defendant and others of the means of determining the just and lawful quantities to which it is entitled, and has also caused this defendant and other defendants in Utah County, to suffer great inconvenience and incur heavy and burdensome costs and expenses in connection with the measurement, division and separation of the water claimed to have been transferred from one diversion point to another or turned into said river from new sources of supply by the plaintiff. That the acts of the plaintiff in wrongfully stopping and impounding the natural flow of said river, and wrongfully transferring water from one point of diversion to another and the preceding combining with and re-appearing from the waters of said river of waters wrongfully claimed by the plaintiff have resulted in great and irreparable injury to this defendant. That the plaintiff threatens to continue such wrongful acts and will do so unless restrained therefrom by an order of this court.

THIRTY--First on the 1<sup>st</sup> day of January, 1902, the District Court of the Fourth Judicial District of the state of Utah, in and for Utah County, in an action pending in said Court numbered 718, wherein Provo City et al. were plaintiffs and the West Union Canal Company et al. defendants, a decree was made and entered under which the rights of the parties in said action in and to the waters of Provo River, as they then flowed at and below the mouth of Provo Canyon, were settled and determined, which decree has never been modified, vacated nor appealed from, and is now a valid and subsisting judgment of said Court.

...that on the 26th day of January, 1907, the District Court of the Fourth Judicial District of the state of Utah, in and for Utah County, in a cause therein pending wherein Provo City et al. were plaintiffs and the Telluride Power and Transmission Company et al. were defendants, duly made and entered a decree, which has never been modified, reversed or appealed from, and which is now a valid and subsisting judgment, whereby all of the waters of said river flowing at the mouth of Provo Canyon were divided into two classes designated as class "A", and class "B", respectively. That class "A" water under said decree consists of all the water of said river when the flow thereof has decreased to not more than 17,467 cubic feet per minute of time, measured at the mouth of Provo Canyon, and the several points of intake of the parties in said action taking waters from said river above the mouth of said canyon, and class "B" water under the terms of said decree consists of all the waters of said river in excess of 17,467 minute feet, measured as aforesaid. That the plaintiff in this action is the grantee and successor in interest of the Blue Cliff Canal Company, a corporation, which Blue Cliff Canal Company was one of the defendants in the action in which the decree last aforesaid was rendered, and the plaintiff in this action asserts, claims and maintains, as the grantee and successor in interest of the said Blue Cliff Canal Company all of the rights in the waters of said river awarded and decreed to the said Blue Cliff Canal Company by the judgment in said action. That the quantity of class "B" water awarded by said decree to the Blue Cliff Canal Company was  $\frac{960}{17,960}$ ths of the waters of said river measured at the point designated in said decree and the plaintiff in this action, as the grantee and successor in interest of the said Blue Cliff

canal company is estopped, by virtue of said decree, from claiming or asserting any claim or right in and to the waters of Provo River measured at the point last aforesaid, in excess of the quantity of water awarded to the said Blue Cliff Canal Company by the terms of said decree.

RIGHTS.-- That the plaintiff and each of the other defendants herein, as this defendant is informed and believes and therefore alleges, asserts and sets up some claim or interest adverse to the ownership, title and rights of this defendants to the use of the waters of said Provo River, as claimed by the defendant herein, the exact nature or character of which claims this defendant is unable to state, and this defendant alleges that each and all of the said adverse claims of the plaintiff and the other defendants in this action are without right or foundation in law and are inferior to the rights of this defendant and the assertion of the same are a cloud upon this defendant's title and ownership in and to the waters of said river, as in this counter-claim and cross-complaint set forth.

WHEREUPON, this defendant prays judgment:

That the plaintiff and each of the other defendants in this action be required to set forth each and every interest and claim made by them and each of them in and to the waters of said Provo River adverse to the rights of this defendant as hereinbefore set forth, and that said several adverse claims and interests be adjudicated and determined and declared to be without right or foundation as against the right of this defendant; that the title, ownership and right to the use of the quantity of water from said river claimed by this defendant as herein set forth be quieted and confirmed by a decree of this Court as against the claims

and pretended rights of each and all of the other parties herein, and that the plaintiff and the other defendants herein be enjoined and restrained from, in any manner, interfering with the rights of this defendant in and to the waters of said river, and that this defendant have such other and further relief as may be proper in the premises.

This defendant prays for general relief and for its costs herein expended.

Grant C. Bagley  
Attorney for Defendant

Upper East Union Irrigation Company

STATE OF UTAH, }  
COUNTY OF UTAH. } 3S.

Thomas Boardman, being first duly sworn upon his oath deposes and says; that he is an officer to-wit, president of Upper East Union Irrigation Co., one of the defendants in the above entitled action; that he has read the foregoing answer, counter-claim and cross complaint, and the statements therein made are true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters, he believes them to be true.

Thomas Boardman

Subscribed and sworn to before me

12th day of January, 1915.

Martie M. Larson  
Notary Public.



Commission expires: August 3<sup>rd</sup>, 1918.

12th Dist Court

Wash County Wash

Chase Worcester Co

v.

Chase City et al

Please find enclosed  
and soon consider  
of the following  
written by Mr. [unclear]  
Wm. H. [unclear] Co.

A copy of this answer  
received from 13<sup>th</sup> 1915  
and payment granted to  
the same as in above

John Burns,  
one of the attorney  
for Plaintiff.

RECEIVED  
APRIL 1915

RECORDED APRIL 1915

RECORDED APRIL 1915

Attest,  
Wm. H. [unclear]  
I was now in [unclear]